

GAIL C. TRABISH, ESQ. (#103482)  
 HEATHER A. GLADSTONE, ESQ. (#238517)  
 BOORNAZIAN, JENSEN & GARTHE  
 A Professional Corporation  
 555 12<sup>th</sup> Street, Suite 1800  
 P. O. Box 12925  
 Oakland, CA 94604-2925  
 Telephone: (510) 834-4350  
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Attorneys for Defendant  
 TARGET STORES, a division  
 of Target Corporation

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

JONI BAKER, a.k.a F. JOAN BAKER,

Plaintiff,

vs.

TARGET CORPORATION, and  
 DOES 1-10, inclusive.

Defendants.

Case No.: C-07-04998 BZ

**DECLARATION OF GAIL C.  
 TRABISH, ESQ. IN SUPPORT OF  
 OPPOSITION OF DEFENDANT  
 TARGET CORPORATION TO  
 PLAINTIFF'S MOTION TO REMAND  
 REMOVED ACTION**

Date: December 5, 2007  
 Time: 10:00 a.m.  
 Dept: G  
 Judge: Hon. Bernard Zimmerman

Complaint Filed: April 9, 2007

I, Gail C. Trabish, declare:

1. I am an attorney licensed to practice law in the State of California, and I am admitted to practice in the United States District Court for the Northern District of California. I and am an attorney with the law firm, Boornazian, Jensen and Garthe, attorney of record for TARGET STORES, a division of TARGET CORPORATION ("TARGET").

2. I have personal knowledge of the facts set forth in this declaration and, if called upon as a witness to testify, I could and would competently testify thereto.

3. On April 9, 2007, plaintiff filed this action in the Alameda County Superior Court against defendant TARGET for premises liability arising out of a slip and fall which occurred at a

1 Target store in San Leandro, California, on April 20, 2005.

2 4. In an effort to obtain information necessary to evaluate plaintiff's liability  
3 contentions and damage claims, defendant TARGET served plaintiff with written discovery and a  
4 Request for Statement of Damages. On July 12, 2007, TARGET propounded to plaintiff Form  
5 Interrogatories, Request for Production of Documents, Sets One and a Request for Statement of  
6 Damages. Defendant also issued a subpoena for records to Gap, Inc, plaintiff's employer, in an  
7 effort to calculate plaintiff's lost wage claim based on her employment records.

8 5. Pursuant to the California Code of Civil Procedure, responses to discovery were  
9 due on August 16, 2007. The response to the Request for Statement of Damages was due on  
10 August 1, 2007 pursuant to California Code of Civil Procedure Section 425.11.

11 6. On August 23, 2007, plaintiff served responses to defendant's initial discovery  
12 requests *by mail*. The responses were incomplete in several regards. Specifically, plaintiff did not  
13 answer Form Interrogatory No. 8.4 regarding her monthly income and provided an incomplete  
14 response to Form Interrogatory No. 8.7 concerning the total amount of lost wages and a  
15 determination as to how it was calculated. Plaintiff also failed to verify the responses.

16 7. On September 6, 2007, I received a Certificate of No Records from the custodian of  
17 records for Gap, Inc., plaintiff's employer, thereby rendering me incapable of independently  
18 determining plaintiff's wage and income information. A true and correct copy of the Certificate of  
19 No Records is attached hereto as **Exhibit A**.

20 8. Due to plaintiff's failure to provide complete responses at the outset and the  
21 certificate of no records from plaintiff's employer, I was unable to accurately discern the true  
22 verified amount of plaintiff's damage claims related to income loss. With respect to medical  
23 expenses incurred as a result of the incident, the only information in defendant's possession at that  
24 time was HealthCare Consolidated Billing from Kaiser, reflecting charges of \$8,284.50, of which  
25 \$5,259.92 has been paid. I did not believe those expenses alone would constitute a basis for  
26 Removal to Federal Court. A true and correct copy of said billing from Kaiser is attached hereto  
27 as **Exhibit B**.

28 9. As a result of the incomplete information in defendant's possession concerning

1 plaintiff's full damage claims, on September 27, 2007, Ms. Trabish sent plaintiff's counsel, Alan  
2 S. Yee, Esq., meet and confer correspondence requesting that he provide full and complete  
3 responses to TARGET'S Form Interrogatories and Request for Production of Documents, Sets  
4 One. Ms. Trabish also emphasized that neither the responses to form interrogatories nor the  
5 responses to request for production of documents were verified. A true and correct copy of said  
6 correspondence is attached hereto as **Exhibit C**.

7 10. On that same day, September 27, 2007, Ms. Trabish also deposed plaintiff's  
8 husband, Daryl Anders. The deposition of plaintiff's husband was initially noticed for  
9 September 12, 2007. At the request of plaintiff's attorney, due to a conflict in his calendar, the  
10 deposition date was changed to September 27, 2007. Mr. Anders testified upon questioning that  
11 plaintiff lost time lost from work prior to and following her surgery, and further testified that she  
12 earned approximately \$70,000 per year.

13 11. As a result of Mr. Anders sworn testimony on September 27, 2007, I filed a Petition  
14 for Removal of this action to the United States District Court for the Northern District of  
15 California pursuant to 28 U.S.C. §1443(b).

16 12. It was not until October 5, 2007, a week after I filed the Petition for Removal, that  
17 plaintiff responded to my meet and confer correspondence with the further requested information,  
18 including verifications of the original discovery responses. Again, however, plaintiff failed to  
19 provide a response to Form Interrogatory No. 8.4 concerning her monthly income at that time of  
20 the incident and how that amount was calculated. A true and correct copy of Mr. Yee's October 5,  
21 2007, letter is attached hereto as **Exhibit D**.

22 13. To date, plaintiff has not provided the requested response to Form Interrogatory 8.4.  
23 Similarly, plaintiff has never provided a response to defendant's Request For Statement of  
24 Damages.

25 14. On October 31, 2007, my office followed up with Mr. Yee by facsimile and mail as  
26 to plaintiff's response to Form Interrogatory No. 8.4 and the lack of response to defendant's  
27 Request for Statement of Damages. A true and correct copy of said correspondence is attached  
28 hereto as **Exhibit E**.

1 I declare under penalty or perjury that the foregoing is true and correct.

2 Executed on this 6th day of November, 2007 at Oakland, California.

3  
4   
5 \_\_\_\_\_  
6 GAIL C. TRABISH, ESQ.

6 25014\417148

# **EXHIBIT A**



**COMPEX**  
*Legal Services, Inc.*

SEP 11 2007  
GCT 25014

ORDER COMPLETION LETTER - CNR OBTAINED

9/06/07

BOORNAZIAN, JENSEN & GARTHE  
555 - 12TH STREET, SUITE 1800  
OAKLAND, CA 94607  
ATTN: ALEXINE BRAUN

YOUR FILE NUMBER:  
CASE NUMBER : HG 07319664  
CASE CAPTION : JONI BAKER, AKA F. JOAN BAKER,  
V. TARGET CORPORATION, ET AL.,  
RECORD SUBJECT : FLORELLA JOAN BAKER  
COMPEX REQUEST #: G201641 - 005  
LOCATION : THE GAP, INC. C/O CT CORPORATION SYSTEM

DEAR ALEXINE BRAUN,

Please accept this as confirmation that the above order is being closed due to receipt of a valid Certificate of No Records (CNR) from the requested location. All appropriate due diligence has been completed. Attached is a fully detailed CNR.

Should additional information become available which indicates records exist, please contact me and we will continue our efforts to obtain the requested records.

Please do not hesitate to call me if you have any questions.

Sincerely,

Northern CA CS Team (BK)  
1824 TRIBUTE ROAD, SUITE 'J'  
SACRAMENTO, CA 95815  
(800) 426-6739  
Fax: (916) 646-0521



**COMPLEX**

Legal Services, Inc.

**Certification of No Records**

Record Subject: FLORELLA JOAN BAKER

Date of Birth: 01.28.63 Soc Sec #: 604-41-1212

AKA: JONI BAKER

I, the undersigned, being the duly authorized custodian of records or other qualified witness for the following entity:

CAAP INC PH# 1466 411 277 2 (x) 20600  
818 W. 8th St LA CA 90017

With personal knowledge of the facts set forth below, and authority to certify said facts, do hereby attest as follows:

- |  | Yes                                 | No                       |
|--|-------------------------------------|--------------------------|
| 1) A complete and thorough search of all active, inactive, and stored files has been made for the records.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2) All identifying information provided, including but not limited to dates of birth, social security numbers, file numbers, dates of treatment or service, and names of involved parties was used in the search.                | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3) All possible information that can be used to search for the records of the record subject named above was provided, and no further search with additional information is possible.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4) All branch offices and other business locations for the entity listed above have been searched.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5) The entity listed above has no separate private records or other separate files, including consultations, treatment classifications, or chronological files, that were in any way excluded from the search for these records. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6) To the best of my knowledge and belief, the entity listed above does not now and never has operated under other names or at other locations that were in any way excluded from the search for these records.                  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7) To the best of my knowledge and belief, none of the requested records currently exist.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

For any "No" answers, please provide a detailed explanation:

The records called for and described cannot be produced for the following specific reasons:

Record(s) Requested	Never Existed	Lost	Destroyed	Retention Policy	Other (please explain)
EMPLOYMENT AND PAYROLL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		Unable to locate.
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

I hereby declare under penalty of perjury, pursuant to the laws of the State of NEW MEXICO that the foregoing is true and correct.

Executed on: 8/31/2007 at Albuquerque, NM

Signature: Alan Gill Print name: Alan Gill

As an agent of Complex Legal Services, Inc. I hereby declare that all information provided to Complex regarding these records was communicated to the custodian prior to the execution of this Certificate of No Records.  
NOTE: The Custodian was requested to sign this Certificate and refused, electing instead to generate a similar document.

Agent Signature: [Signature]  
Date: 9/4/07 Complex Order#: G201641-005

# **EXHIBIT B**



# **EXHIBIT C**

HEALTHCARE RECOVERIES  
P.O. Box 36380  
Louisville, Kentucky 40233

Case 3:07-cv-04998-BZ Document 13 Filed 11/07/2007 Page 10 of 18  
FEDERAL TAX ID: 61-141758  
TELEPHONE NUMBER: (800) 964-0634  
PAGE 1 OF 1

## CONSOLIDATED STATEMENT OF BENEFITS

PATIENT'S NAME: JONI BAKER  
HEALTH PLAN: KAISER CALIFORNIA NORTH  
DATE OF INJURY: 4/20/2005  
SERVICE PERIOD: 4/20/2005-7/14/2005  
EVENT NUMBER: HRI 6341899-6335731

Subject to change.

### Instructions:

- If remitting payment, make checks payable to: Healthcare Recoveries.
- Write the patient's name, JONI BAKER, and event number, 6341899-6335731, on the check.

Provider of Service	Diagnosis Code	Claim Number	
Date of Service	Procedure Code(s)	Billed Amt.	Provided Benefits
DERBY, RICHARD MD	722.2 DISC DISPLACEMEN	A02250019501	
5/10/2005	76005 FLUOROGUIDE FOR	\$100.00	\$50.30
5/10/2005	62310 EPIDURAL/SUBARAC	\$240.00	\$87.20
5/10/2005	62318 INJECT SPINE W/C	\$250.00	\$91.31
5/10/2005	64480 TRANSFORAMIN CER	\$240.00	\$136.90
5/10/2005	64479 TRANSFORAMIN CER	\$480.00	\$213.24
KAISER, PROVIDER	723.1 CERVICALGIA	R-9112356	
4/20/2005	99283 EMERGENCY VISIT	\$335.00	\$335.00
	723.1 CERVICALGIA	R-9112356	
4/20/2005	90782 INJECTION (SC)/(	\$56.00	\$56.00
4/20/2005	J1885 KETOROLAC 15MG/1	\$160.00	\$160.00
4/20/2005	71010 CHEST; SINGLE VI	\$345.00	\$345.00
4/20/2005	72050 SPINE, CERVICAL;	\$595.00	\$595.00
4/20/2005	450 EMERG ROOM	\$825.00	\$825.00
MEYER, FREDERICK T	722.4 CERVICAL DISC DE	R-9112357	
4/21/2005	99212 OFFICE OUTPATIEN	\$125.00	\$125.00
5/3/2005	99212 OFFICE OUTPATIEN	\$125.00	\$125.00
5/3/2005	97002 PT RE-EVALUATION	\$175.00	\$175.00
6/14/2005	99212 OFFICE OUTPATIEN	\$125.00	\$125.00
6/16/2005	99241 OFFICE CONSULTAT	\$160.00	\$160.00
MOORE, CHARLOTTE PH	723.0 SPINAL STENOSIS	R-02013333201	
7/14/2005	95925 SOMATOSENSORY TE	\$103.00	\$103.00
7/14/2005	95926 SOMATOSENSORY TE	\$103.00	\$103.00
7/14/2005	99070 MISCELLANEOUS CE	\$210.00	\$210.00
7/14/2005	95920 INTRAOPERATIVE N	\$350.00	\$350.00
SPINAL DIAGNOSTICS	722.2 DISC DISPLACEMEN	A02250019502	
5/10/2005	490 AMBULATORY SURGICA	\$397.50	\$111.03
5/10/2005	490 AMBULATORY SURGICA	\$400.00	\$111.74
5/10/2005	490 AMBULATORY SURGICA	\$795.00	\$222.07
5/10/2005	490 AMBULATORY SURGICA	\$1590.00	\$444.13
Total Billed Charges	\$8,284.50	Amount Received	\$0.00
Total Benefits Provided	\$5,259.92	Balance Due	\$5,259.92

**Boornazian,  
Jensen &  
Garthe**

A Professional Corporation

Gail C. Trabish  
gtrabish@bjg.com

555 12th Street, Suite 1800  
Oakland, CA 94607  
Telephone: 510.834.4350  
Facsimile: 510.839.1897  
Website: www.bjg.com

Mailing Address  
P.O. Box 12925  
Oakland, CA 94604-2925

September 27, 2007

**VIA FACSIMILE & U.S. MAIL**

Alan S. Yee, Esq.  
Siegel & Yee  
499 14<sup>th</sup> Street, Ste. 220  
Oakland, CA 94612

RE: *Jonie Baker v. Target Corporation, et al.*  
Alameda County Superior Court Case No.: HG 07319664  
Our File No.: SEDGWI 25014

Dear Mr. Yee:

I am in receipt of plaintiff's responses to judicial form interrogatories and request for production of documents in the above captioned matter. The responses have several deficiencies. This letter is being sent in an effort to meet and confer regarding those deficiencies prior to bringing a motion to compel.

The deficiencies are as follows:

First and foremost, neither the response to form interrogatories or request for production of documents were verified. Please provide me with an original verification required by the Code of Civil Procedure.

As it relates to the request for production of documents please provide me with documents responsive to requests 3, 4, 5 and 6.

As it relates to request No. 10, I do believe that videographs of plaintiff's wedding ceremony and reception are relevant as it relates to plaintiff's injuries and damages especially in light of the fact that her wedding took place soon after the subject incident. To the extent that plaintiff is claiming mobility issues or problems with movement following the subject incident, this information is critical to an analysis of these claims. Please provide reproduction. We will agree to reimburse the reasonable reproduction costs thereof.

As it relates to the judicial form interrogatories the deficiencies are as follows:

Alan S. Yee, Esq.  
September 27, 2007  
Page 2

Interrogatory 8.7: The response to this interrogatory is incomplete. Please provide a complete response, including the total amount of lost wages and a determination as to how it was calculated.

Interrogatory 6.5: Your response is incomplete. Please respond fully to all of subparts.

Interrogatory 6.7: Again, the response is incomplete. Please respond to all subparts.

Please let me hear from you on this matter within the next two weeks. If I have not heard from you by October 11, 2007 I will have no option but to file a motion to compel.

Sincerely,

BOORNAZIAN, JENSEN & GARTHE

*Gail C. Trabish*

Gail C. Trabish

GCT:amb:alb

25014413627

# **EXHIBIT D**

OCT 09 2007



## ATTORNEYS AT LAW

❖ DAN SIEGEL

❖ ALAN S. YEE

❖ JANE BRUNNER

❖ JOSE LUIS

FUENTES

❖ TANYA RUSSELL

❖ DEAN ROYER

## OF COUNSEL

❖ ANNE

BUTTERFIELD

WEILLS

October 5, 2007

Gail C. Trabish  
Boornazian, Jensen & Garthe  
555 12<sup>th</sup> Street, Suite 1800  
Oakland, CA 94607

Re: *Baker v. Target*, No. HG 07319664

Dear Ms. Trabish:

This letter is to respond to your letter of September 27, 2007. Attached are the original verifications to the responses to the documents request and interrogatories.

As to documents responsive to requests 3, 4, 5 and 6, I believe you have all documents that I currently have. I have asked my client to review her documents and I will provide any additional documents before her deposition on October 15, 2007.

As to request No.10, as we indicated at Mr. Anders' deposition, I am currently reviewing any videographs of plaintiff's wedding and will let you know what the reproduction costs will be.

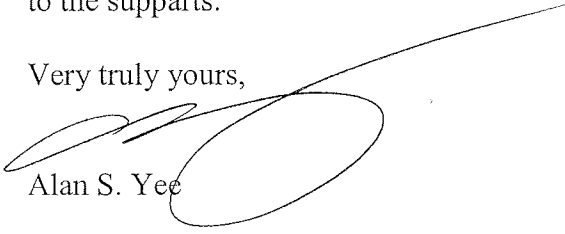
With respect to Interrogatory 8.7, until we obtain plaintiff's employment records, her wage loss is estimated as follows:

\$1446.92/ week x 49 weeks = \$70,899.08 (two weeks off after April 21, 2005 and the period from her surgery in July 2005 to her return in June 2006)

\$1446.92/ week x 3 = \$4,340.76 for the period of part time work indicated in interrogatory 8.5.

With respect to Interrogatories 6.5 and 6.7, we will supplement these responses as to the supports.

Very truly yours,

  
Alan S. YeeASY:jg  
Encl.

VERIFICATION

I, JONI BAKER, declare:

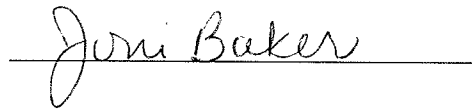
I am a Plaintiff in this action.

I have read the foregoing Response to Request for Production of Documents and know the contents thereof.

The information supplied therein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and is therefore provided as required by law. The information contained in the foregoing document is true, except as to the matters which were provided by my attorneys or other agents, and, as to those matters, I am informed and believe that they are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Oakland, on August 24, 2007.



VERIFICATION

I, JONI BAKER, aka. JOAN BAKER, declare:

I am a Plaintiff in this action.

I have read the foregoing Response to Interrogatories and know the contents thereof.

The information supplied therein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and is therefore provided as required by law. The information contained in the foregoing document is true, except as to the matters which were provided by my attorneys or other agents, and, as to those matters, I am informed and believe that they are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Oakland, on August 24, 2007.

Joni Baker



# **EXHIBIT E**

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Boornazian,  
Jensen &  
Garthe

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Oakland, CA 94604-2925

October 11, 2007

VIA FACSIMILE & U.S. MAIL

Alan S. Yee, Esq.  
Siegel & Yee  
499 14<sup>th</sup> Street, Ste. 220  
Oakland, CA 94612

RE: *Joni Baker v. Target Corporation, et al.*  
Alameda County Superior Court Case No.: HG 07319664  
Our File No.: SEDGWI 25014

Dear Mr. Yee:

Thank you for your letter dated October 5, 2007. In addition to the supplemental responses that you plan on providing to Interrogatory Nos. 6.5 and 6.7, I also ask that you provide me with a verified amended response to Interrogatory No. 8.7.

Thank you for your cooperation in this regard.

Sincerely,

BOORNAZIAN, JENSEN & GARTHE



Gail C. Trabish

GCT:alb

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